

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
COLUMBIA DIVISION**

Joseph D. Dantzler, Jr.,)	
)	
Plaintiff,)	Civil Action No.: 3:15-cv-05100-JMC
)	
v.)	ORDER AND OPINION
)	
Time Warner Cable; Sedgwick Claims)	
Management Services,)	
)	
Defendants.)	
_____)	

Plaintiff Joseph Dantzler (“Plaintiff”), proceeding pro se, filed this action in the Court of Common Pleas for Lexington County, South Carolina, seeking \$415,000.00 in damages for emotional distress caused by Defendants’ alleged failure to properly handle Plaintiff’s claims under his disability insurance policy. (ECF No. 1-1.) On December 31, 2015, Defendants Time Warner Cable and Sedgwick Claims Management Services (collectively “Defendants”) removed the action to this court on the basis of this court’s diversity jurisdiction. (ECF No. 1.) This matter is now before the court on Plaintiff’s Motion to Remand (ECF No. 16), and Motion for Default Judgment (ECF No. 17.) Defendants filed an opposition to both motions. (ECF Nos. 21, 22.) Subsequently, Defendants filed motions to dismiss both the original complaint and amended complaint pursuant to Federal Rule of Civil Procedure 12(b)(6). (ECF Nos. 23, 37.) Plaintiff timely filed responses in opposition to both motions to dismiss. (ECF Nos. 34, 42.)

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02, D.S.C., the matter was referred to United States Magistrate Judge Paige Gossett for a Report and Recommendation. On April 15, 2016, the Magistrate Judge issued a Report and Recommendation (“Report”) recommending the court deny Plaintiff’s Motion to Remand and Motion for Default Judgment.

The Magistrate Judge also recommended that the court grant Defendant's motion to dismiss, unless Plaintiff filed a motion to amend his complaint and responded to the court's interrogatories. (ECF No. 46.) The Report sets forth the relevant facts and legal standards, which this court incorporates herein without a recitation.

The Magistrate Judge's Report is made in accordance with 28 U.S.C. § 636(b)(1) and Local Civil Rule 73.02 for the District of South Carolina. The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight. The responsibility to make a final determination remains with this court. *See Matthews v. Weber*, 423 U.S. 261, 270-71 (1976). This court is charged with making a *de novo* determination of those portions of the Report to which specific objections are made, and the court may accept, reject, or modify, in whole or in part, the Magistrate Judge's recommendation, or recommit the matter with instructions. *See* 28 U.S.C. § 636 (b)(1). Objections to a Report and Recommendation must specifically identify portions of the Report and the basis for those objections. Fed. R. Civ. P. 72(b). "[I]n the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.'" *Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 316 (4th Cir. 2005) (quoting Fed. R. Civ. P. 72 advisory committee's note).

Plaintiff was advised of his right to file objections to the Report. (ECF No. 46 at 12). Plaintiff was required to file objections by May 2, 2016. To date, Plaintiff has not filed any objections to the Report. Accordingly, this court has reviewed the Report of the Magistrate Judge and does not find clear error.

After a thorough review of the Report and the record in this case, the court finds the Report provides an accurate summary of the facts and law. The court **ADOPTS** the Magistrate Judge's

Report and Recommendation (ECF No. 46). Accordingly, Plaintiff's Motion to Remand (ECF No. 16) is **DENIED**. Plaintiff's Motion for Default Judgment (ECF No. 17) is **DENIED**. The court notes that the Report did not address Defendants' first motion to dismiss as to the original complaint (ECF No. 23), however, because Plaintiff filed an amended complaint (ECF No. 33), the amended complaint superseded Plaintiff's original complaint. *See Young v. City of Mount Ranier*, 238 F.3d 567, 573 (4th Cir. 2001). Thus, Defendants' first motion to dismiss (ECF No. 23) is **DENIED** as moot. Further, the court acknowledges that in accordance with the Report, Plaintiff filed a motion to amend his complaint (ECF No. 52) and entered responses to the court's specialized interrogatories (ECF No. 53). Therefore, this court **REMANDS** this matter to the Magistrate Judge for reconsideration of Defendants' motion to dismiss the amended complaint (ECF No. 37) in light of Plaintiff's filing of the motion to amend the complaint (ECF No. 52).

IT IS SO ORDERED.

A handwritten signature in black ink, reading "J. Michelle Childs". The signature is written in a cursive, flowing style.

United States District Judge

August 9, 2016
Columbia, South Carolina